IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13914 of 2019

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Gurnam Singh (Male) aged about 37 years, Son of Piara Singh, Resident of Village- House No. 68, Hetampura, Preet Nagar, Police Station- Ajnala, District- Amritsar (Punjab). At present resident of Village- Odhi, P.S.- Bawal, District- Rewari (Punjab).

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Excise Department, Government of Bihar, Patna.
2. The Principal Secretary, Excise Department, Govt. of Bihar, Patna.
3. The District Magistrate-cum-Collector, Gopalganj.
4. The Superintendent of Police, Gopalganj.
5. The Officer-in-charge (S.H.O.), Mohammadpur Police Station, Gopalganj.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Lokesh Kumar Singh
For the Respondent/s	:	Mr. Kumar Manish (SC5)

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
and
HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH)

Date : 27-02-2020

Heard Mr. Lokesh Kumar Singh, learned counsel for the petitioner and Mr. Kumar Manish, learned SC-5.

The present writ application has been filed for release of a truck bearing Registration no. HR-47-8448, which has been seized in connection with Mohammadpur P.S. Case No. 10 of 2018, registered for the offences under Section 120(B) of the Indian Penal Code 1860 and Sections 30 (a), 38 and 41 of the

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Bihar Prohibition and Excise (Amendment) Act, 2016 Amendment Act 8 of 2018 (hereinafter referred to as "the Act").

The prayer as stipulated in paragraph no. 1 of the writ petition reads as follows:-

> *"That the instant writ application is being preferred on behalf of the petitioner inter-alia for the grant of following reliefs:*
>
> *(i) For issuance of an appropriate writ / order / direction commanding and directing the respondents to release the Truck of the petitioner bearing Registration No. as HR-47-8448 which has been seized by the police in connection with Mohammadpur P.S. Case No. 10 of 2018 for the offences under sections 120(B) of the Indian Penal Code and Sections 30(a), 38, 41 of the Bihar Prohibition and Excise (Amendment) Act, 2016.*
>
> *(ii) For further issuance of writ / direction / order as Your Lordships may kind deem fit and proper."*

The prosecution case as per the written report of Manoj Kumar Sah, Station House Officer, Mohammadpur P.S. addressed to the learned A.D.J. II, Gopalganj is to the effect that one truck loaded with liquor was intercepted and the driver was apprehended who disclosed that another truck with liquor had moved towards

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Muzaffarpur, and thereafter, vehicle check was conducted. Consequently, the vehicle in question was intercepted from which 4843 liters of Indian Made Foreign Liquor was recovered leading to registration of Mohammadpur P.S. Case No. 10 of 2018.

It is submitted by learned counsel for the petitioner that the petitioner is the owner of the vehicle in question and the vehicle is rotting under the open sky which will reduce the vehicle into a junk and petitioner is ready to produce the vehicle in question as and when required by the court concerned. More over the petitioner will neither change the shape of the vehicle nor transfer the ownership of the same.

The counter affidavit dated 27.11.2019 filed on behalf of the respondent no. 4 and 5 i.e. Superintendent of Police, Gopalganj and Officer- in- charge, Mohammadpur Police Station did not suggest that any confiscation proceeding was initiated. Hence, this Court vide order dated 05.12.2019 directed the respondent no. 2 -Principal Secretary, Excise Department, Government of Bihar, Patna to file affidavit. The affidavit on behalf of the Principal Secretary, Excise Department dated 27.02.2020 has been produced in the Court itself which suggests that the truck in question was subjected to confiscation proceeding vide Excise Confiscation Case No. 385 of 2018 wherein final

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order has been passed by the learned Collector, Gopalganj on 05.01.2019 and the vehicle in question has been confiscated. The Superintendent of Excise has been directed to get the value determined of the confiscated vehicle by the Motor Vehicle Inspector and treating it to be the minimum value, auction the same after giving public notice.

Considering the fact that the vehicle in question has already been confiscated in January, 2019 hence as per the provision under Section 61 of the Act, the confiscated property (i.e. vehicle) has already been vested with the State Government hence the petitioner is no longer the owner of the vehicle in question. However, it is submitted by learned counsel for the petitioner that petitioner was not aware about the final order passed in the confiscation case as such, we give liberty to the petitioner to prefer appeal under Section 92(2) of the Act before the Excise Commissioner within a period of four weeks along with an application for condonation of delay. It is expected that the appellate authority shall sympathetically consider the application for condonation of the delay in view of the fact that writ application was pending before this Court since 09.07.2019 and if the vehicle in question has not been auctioned till date, then it

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shall not be put to auction sale till petitioner's stay petition in appeal is decided by the appellate authority.

The writ petition with above observation stands disposed of.

(Dinesh Kumar Singh, J)

(Anil Kumar Sinha, J)

praful/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	07-03-2020
Transmission Date	NA

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